

FAX RECEIVED  
NOV 11 2005  
Technology Center 2100

FROM WILLKIE FARR 37 FAX DEPT.

(THU) 11.10'05 18:42/ST. 18:42/NO. 4200000164 P 2

PATENT

ATTORNEY DOCKET NO. 114596-09-4016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/425,401 Confirmation No.: 9510  
Applicant: John S. Yates, Jr., et al.  
Title: PROFILING PROGRAM EXECUTION TO IDENTIFY FREQUENTLY  
EXECUTED PORTIONS AND ASSIST BINARY TRANSLATION  
Filed: October 22, 1999  
Art Unit: 2124  
Examiner: John Q. Chavis  
Atty. Docket: 114596-09-4016  
Customer No. 38492

PETITION TO WITHDRAW NOTICE OF ALLOWANCE

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Applicant requests that the Notice of Allowance of 8/12/2005 be withdrawn, and that prosecution be reopened.

Questions of patentability of the claims in this application are raised in application Serial No. 09/330,852. In particular, a question of double patenting is raised between claims 1-30 of this application vis-à-vis claims 1-51 of the '852 application (09/330,852, Office Action of 9/30/2005, ¶ 2).<sup>1</sup> Until the record is unambiguously clear that the claims in this application are patentable, allowance is premature.

**Kindly fax a decision withdrawing the allowance to 212 728 9757.**

Applicant suggests the following course of action. Allowance of this application should be withdrawn. Applicant intends to file a response to Office Action, and a request for

<sup>1</sup> Unfortunately, it is impossible to determine whether the issue relates to "same invention" double patenting or "obviousness type" double patenting. The Office Actions in these two applications have not used the approved form paragraphs, but instead have used unauthorized statements, based on a confusing mish-mash of the two.

I certify that this correspondence, along with any documents referred to therein, is being transmitted by facsimile on November 10, 2005 to Art Unit 2124 at FAX no. 571 273 8300 to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

*[Signature]*

Petition to Withdraw Notice of Allowance  
3049642.1

1

114596-09-4016 09/425,401

FROM WILLKIE FARR 37 FAX DEPT.

(THU) 11. 10' 05 18:43/ST. 18:42/NO. 4200000164 P 3

Application Serial No. 09/420,701  
Attorney Docket No. 114596-09-4016

Petition Dated November 10, 2005 - Withdrawal of Notice of Allowance of August 12, 2005

withdrawal of finality of rejection, in the '852 application by 11/30/2005. Once the Office decides the issues in the '852<sup>2</sup>, this application should be reconsidered in light of the state of the '852 application. A replacement Office Action or Notice of Allowance may then be issued in this application.

The undersigned attorney will be out of the office on Monday and Tuesday November 14 and 15. The PTO is authorized to communicate by email to [DBoundy@Willkie.com](mailto:DBoundy@Willkie.com), or by cell phone to 646 472 9737, for these two days.

It is believed that no fee is required. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 23-2405, Order No. 114596-09-4016.

Respectfully submitted,

WILLKIE FARR & GALLAGHER LLP

Dated: November 10, 2005

FAX RECEIVED  
NOV 11 2005  
Technology Center 2100

By: David E. Boundy  
David E. Boundy  
Registration No. 36,461  
WILLKIE FARR & GALLAGHER LLP  
787 Seventh Ave.  
New York, New York 10019  
(212) 728 8000  
(212) 728-8111 Facsimile

Applicant again requests the following. (a) On issues of double patenting, the approved form paragraphs should be used, and should be accompanied by an element-by-element comparison of claims that are thought to be "double patenting" correlates of each other. (b) For other patentability issues, all limitations - of at least the independent claims - should be considered exactly as presented, without omission or paraphrase, and any assertions of "inherency" should be accompanied by showings from "fact and/or technical reasoning ... that the allegedly inherent characteristic necessarily flows" (emphasis in MPEP).

Permission to Withdraw Notice of Allowance  
3049(42.1)

2

114596-09-4016 09/125,101